

March 31, 1999

Lawrence E. Strickling
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street NW
Washington, D. C. 20554

CC: docket - 92-237

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APR - 2 1999

Federal Communications Commission
Office of Secretary

Dear Mr. Strickling:

In a Public Notice released on February 17, 1999¹, the Common Carrier Bureau (Bureau) requested input from the North American Numbering Council (NANC) concerning the Lockheed Martin Request for expeditious Review of the Transfer of the Lockheed Martin Communications Services (CIS) Business to a new independent company, Warburg Pincus & Company². In a Public Notice released on March 15, 1999 the Bureau extended the date for NANC input to March 31, 1999³.

In reaching its recommendations that are set forth in this letter, the NANC received input from Lockheed Martin, Warburg, Pincus & Co. and Mitretek Systems.

At a conference call meeting on March 30, 1999, the NANC reached consensus on the issues raised by the Bureau in its February 17 Public Notice. During the call, NANC members considered a number of questions consistent with the charge assigned by the Bureau as follows:

The first question: *Does NANC believe that the CIS Acquisition Corporation (CISAC) and its relationship with Warburg, Pincus & Co. is neutral under all the criteria set forth in the Requirements Document as well as under the Commission's rules and orders?* NANC consensus was that the CISAC does not meet all the criteria for neutrality as cited in the Requirements Document and FCC rules.

The second question: *Does the NANC believe that the CISAC is not subject to undue influence by parties with a vested interest in the outcome of numbering administration activities?* There was consensus on the part of NANC members that the CISAC is not subject to such undue influence. In reaching this conclusion, the NANC is relying on commitments made by Lockheed Martin and Warburg, Pincus in submissions to the Federal Communications Commission (FCC) and correspondence with the NANC on the question of the ongoing neutrality of the CISAC. The NANC believes it is essential that these commitments (which have been expanded and refined in the communications referenced above) be clearly described and cited (as expanded and refined) as

¹ See Public Notice DA 99-347 (rel. Feb 17, 1999), CC Docket 92-237, NSD File No. 98-151, FCC Seeks Comment on Request for Expeditious Review of the Transfer of the Lockheed Martin Communications Industry Services Business. Comments due by March 17, 1999.

² See Public Notice DA 99-117 (rel. Jan. 7, 1999) CC Docket 92-237, NSD File No. 98-151, FCC Seeks Comment on Request Expeditious Review of the Transfer of Lockheed Martin Communications Industry Services Business. Petition for Review of the Transfer of the Lockheed Martin Corporation to an Affiliate of Warburg, Pincus & Co., filed December 21, 1998, (Lockheed Martin Request).

³ See Public Notice DA 99-516 (rel. Mar. 15, 1999), CC Docket 92-237, NSD File No. 98-151, FCC Extends Deadline for Comments on Lockheed Martin Request for Expeditious Review of the Transfer of Communications Industry Services Business. Comments due by April 16, 1999. Deadline for NANC input extended to March 31, 1999.

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March 31, 1999

obligations in any Order issued by the FCC in this matter. The NANC further believes that the NANC, in its advisory role to the FCC, continue its oversight of the North American Numbering Plan Administrator (NANPA) with respect to ensuring the NANPA's continued neutrality.

The third question: *Does NANC believe that the CISAC can perform the functions of the NANPA in accordance with the Requirements Document and relevant FCC rules?* NANC consensus was affirmative; NANC believes that the CISAC can perform these functions.

The final question considered: *If the Lockheed Martin petition is granted, does the NANC believe that the CISAC and Warburg, Pincus & Co., should be subject to conditions (above and beyond those set forth by Lockheed Martin and Warburg, Pincus & Co.) to assure its neutrality and capability during the current NANPA term? If so, what should those conditions be?* The NANC believes that the CISAC should be explicitly required to be fully cooperative with an independent administrator of 1000 block pooling administration, if a 1000 block pooling administrator other than CIS should be chosen.

As background material I have enclosed the following documents:

Response to the North American Numbering Council CIS Issue Management Group Recommended Warburg Pincus CISAC/CIS Criteria;

Letter dated March 22, 1999 to Chairman, NANC, from Jeffrey E. Ganek, Lockheed Martin-IMS CIS;

Letter dated March 26, 1999 to Chairman, NANC, from Jeffrey E. Ganek, Lockheed Martin-IMS CIS;

Letter dated March 26, 1999 to Chairman, NANC, from Gil Miller, Mitretek Systems;

Supplemental Response to North American Numbering Council Regarding the Transfer of NANPA Responsibilities, and

Discussion Paper for Use in Conjunction with the Conference Call of the North American Numbering Council (NANC) on March 30, 1999.

Sincerely,



Alan C. Hasselwander
Chairman, North American Numbering Council

Enclosures (6)

cc: Yog R. Varma, Anna Gomez, Blaise Scinto, Kris Monteith, Diane Harmon, Jeannie Grimes,
Ron Binz

Responses to the North American Numbering Council CIS Issue Management Group Recommended Warburg Pincus CISAC/CIS Criteria

The Communications Industry Services ("CIS") unit of Lockheed Martin IMS ("LMIMS"), Lockheed Martin and Warburg, Pincus appreciate the opportunity to address the North American Numbering Council ("NANC") CIS Issue Management Group's recommended criteria proposed as a framework to address the neutrality and performance of the North American Numbering Plan Administrator ("NANPA"). We want to provide our views on the proposed criteria to NANC well before the full meeting scheduled for Tuesday, March 16, 1999. CIS Senior Vice President and Managing Director, Jeffrey Ganek will discuss these responses at that meeting.

Issue Management Group's Recommended Warburg Pincus CISAC/CIS Criteria

- A. While CIS itself may be neutral, CISAC and Warburg Pincus, its parent organization must be subject to the same neutrality criterion.
- B. Warburg Pincus investment in telecommunications service providers that use NANP resources must be limited to 10 percent.
- C. WARBURG PINCUS must reduce current investment in telecommunications service providers that do not presently use NANP resources to 10 percent, should those service providers begin using NANP resources.

Response to A, B and C:

Neutrality of CIS is of critical importance. CIS must be neutral. Our challenge is structuring CIS to be neutral on a reliable and practicable basis.

CIS management and LMIMS searched extensively for a qualified acquirer of CIS that would provide a neutral environment. We entered serious discussions with many systems integrators, computer services providers and others. We found that parties with the financial resources, capabilities and interest to acquire CIS had existing or prospective neutrality conflicts. A suitable corporate acquirer of CIS could not be found. Based upon our extensive search we believe that no acquirer of CIS could reliably commit to provisions A, B, and C.

As a result, we propose a structural solution. CIS should be established as a free standing, independent corporation, which is referred to herein as "CISAC." Its sole mission will be to provide neutral, third party services. CISAC will, by charter, have no neutrality conflicts. It will exist solely to serve the needs of the industry for neutral, third party services. CISAC, not its corporate parent, is the entity that is neutral.

Financing is required to establish a free standing corporation. We propose that CISAC be structured so that the financing required for its acquisition and further development is provided on a sound, stable and reliable basis. And, we propose that the financing be structured so that it unquestionably protects the neutrality of CISAC.

We propose that Warburg Pincus provide the financing to establish CISAC as a free standing, independent company. Warburg has agreed to provide the financing through a structure that ensures that the neutrality of CISAC is protected. That is, Warburg Pincus is a financial investor. It will not be involved in day to day CIS operations. It will not control the CISAC board. It will not in any way influence CISAC to favor any company, including any telecommunications service provider in which Warburg Pincus may have interests. And it agrees to strict policing structures that ensure CISAC' neutrality will not be violated.

Warburg Pincus is a financial investor with a diversified portfolio of well-run companies across the spectrum of the domestic and international economies. The fact that Warburg Pincus is a diversified financial investor rather than a strategic investor is an inherent neutrality advantage. Unlike most operations-oriented, strategic investors (such as, for instance, Lockheed Martin), Warburg Pincus does not invest with a view to achieving synergies or efficiencies between and among its separate investments in independent companies (for example, by combining firms' operations). The companies in which Warburg Pincus invests do not share information or expertise with one another as a result of Warburg Pincus' ownership interest. Rather, Warburg Pincus' seeks to maximize each investment's value, without attempting to account for the effect (if any) such efforts may have on other investments.

This requires that Warburg Pincus put in place talented, expert management teams for each company in which it invests, that it provide these management teams with the resources they need to succeed, and that it not be involved in the day-to-day management of these companies. Warburg Pincus has succeeded with this strategy with four private equity funds that are essentially fully invested, and it expects to succeed with this formula with its fifth, and largest, fund, Warburg Pincus Equity Partners ("WPEP").

WPEP is simply not the type of investor that the FCC's structural neutrality rules were designed to address. By virtue of its financial investment strategy, Warburg Pincus has essentially internalized the neutrality criteria of "impartiality" and "non-alignment." WPEP is "neutral" and "impartial" as a result of its structure and investment strategy. For this reason, WPEP's neutrality would not be compromised by a future investment in a telecommunications carrier.

We believe that practically, additional steps are not necessary to ensure neutrality. However, to provide an additional level of operational assurances of CISAC's current and future neutrality, CISAC and Warburg Pincus have committed to a

Code of Conduct.¹ The Code prohibits actions by CISAC and Warburg Pincus that in fact or appearance violate the neutrality of CISAC. And, the Code requires quarterly neutrality audits.

The quarterly neutrality audits ensure that violations of neutrality by CIS will be quickly noticed by the FCC, NANC and the industry. A breach of neutrality identified in the neutrality audits will be grounds for termination of CIS' contracts and work assignments under FCC orders. Termination threatens Warburg Pincus' large equity investment in CIS. Therefore, Warburg is strongly incented to protect the neutrality of CIS.

WPEP's status as a committed financial investor, combined with this Code of Conduct and other safeguards render WPEP the most stable source of neutral, impartial financial ownership and support for the NANPA and LNPA functions. Seen in this light, WPEP's ownership of CISAC should be considered superior to any other potential owner of the CIS business or providers of the NANPA and LNPA functions.

We believe that under FCC rules and policies the proposed transaction is the best possible ownership structure to ensure that the CIS business can continue to perform its functions in a neutral, impartial manner. Both the FCC's rules and practice in applying those rules make clear that *de facto* neutrality is the ultimate goal of the FCC's rules and that structural ownership limitations are only one means of achieving that result.² The neutrality of a potential NANPA or Local Number Portability Administrator ("LNPA") cannot be assessed through rote application of structural ownership limitations. To comply strictly with the terms and provisions of the FCC's neutrality criteria one need not alter existing or proposed investments in telecommunications service providers. Under 47 C.F.R. § 52.12(a)(1)(iii), the FCC has the authority to rule that the NANPA is not subject to undue influence notwithstanding investments in telecommunications service providers. The neutrality of CIS is best protected by establishing it as a free standing, independent company whose sole mission is to deliver high quality, competitively neutral services.

¹ See the proposed Code of Conduct set forth in Attachment 1. The attached version of the Code -- initially presented in the LMIMS, Warburg Pincus request to the FCC on December 21, 1998 to review the transfer of the CIS business to Warburg Pincus -- reflects additional proposed language incorporated as a result of discussions with Limited Liability Companies ("LLCs") regarding the assignment of local number portability contracts to CISAC.

² See 47 C.F.R. § 52.12 ("Notwithstanding [the structural limitations specified in the rules], the NANPA . . . may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities.").

A finding that the NANPA is neutral within the meaning of the FCC's rules governing the administration of numbering resources must take into account a number of factors, only one of which is the ownership interests of its owners. Moreover, the relative importance of these factors is not static but must be understood in the context of a specific proposal. Thus, no single level of investment in a company utilizing North American Numbering Plan ("NANP") resources should automatically result in non-compliance with the FCC's neutrality criteria.

D. The structure of the CISAC board of directors must be:

- 1. 20 percent minimum outside;**
- 2. 40 percent maximum CIS management;**
- 3. 40 percent maximum Warburg Pincus management.**

Response to D:

Warburg Pincus and CIS management agree with these limitations, but suggest that the limitations be stated more generally, as follows:

- 1. At least 20% of the CISAC board of directors must be made up of outside directors;**
- 2. Warburg Pincus will not control 50% or more of the Board of Directors**

These limitations will ensure neutrality. Moreover, because the members of CISAC's management will be prohibited from holding interests in telecommunications companies that would violate the neutrality rules, no limitations are required on their board membership.

E. Warburg Pincus designated board members shall not be involved with day-to-day CIS operations.

Response to E:

Warburg Pincus, LMIMS and CIS agree fully with this requirement.

F. Warburg Pincus must assume equivalent liability to that of Lockheed Martin IMS. It should not be structurally insulated from liability.

Response to F:

Warburg Pincus does not become involved in the day-to-day operations of its portfolio companies. This approach is in direct contrast to a company like Lockheed Martin that takes a direct role in governing the activities of its divisions and subsidiaries. As a financial investor, Warburg Pincus must

leave expert management in charge of companies like CISAC. Such an arrangement, although ideal with respect to neutrality, limits the liability that Warburg Pincus may assume with respect to investment companies. Warburg Pincus simply cannot assume full liability for the actions of a company over which it has no day-to-day control.

CISAC will be operationally and financially strong. Its reliability is comparable to that of LMIMS. CISAC is assuming all of the responsibilities and liabilities in all existing local number portability contracts and NANPA FCC orders. In addition, specific provisions are being developed in cooperation with the regional local number portability LLCs to ensure that adequate protections are provided to the industry for NPAC services.

- G. CISAC has the ability to perform the NANPA function subject to receiving sufficient capitalization. Warburg Pincus has stated intent to fund CIS at a higher level than Lockheed Martin, but this needs to be substantiated.

Response to G:

CISAC's capital structure is very strong. WPEP's investment is in the form of all equity. Warburg Pincus has no plan to take dividends or cash out of CISAC. Warburg Pincus' financial aim for its CISAC investment is for long-term growth. It is Warburg Pincus' intent that the CIS business continue to invest in critical fixed and operating infrastructure.

Warburg Pincus well understands that the viability of its investment in the CIS business (not to mention CIS' fundamental right to even be in this business) is contingent upon continuing to meet the needs of its customers and the criteria prescribed by the FCC. No better governor exists to assure Warburg Pincus' attention to CISAC's financial strength.

Warburg Pincus currently manages five private equity funds with approximately \$6 billion invested in more than 100 portfolio companies, with approximately \$5 billion available for new investments from WPEP and a companion international fund.

As a financial investor, Warburg Pincus can provide the CIS business with access to as much or more financial capital and support as it had from Lockheed Martin. The cash resources WPEP has already committed to its investment in CISAC are greater than those committed by Lockheed Martin. Pursuant to the purchase price adjustment provision of the Transaction Agreement, WPEP essentially has agreed to compensate Lockheed Martin for continued investment in the CIS business pending closing. All of this is occurring at a time when the CIS business is more than capable of supporting the financial requirements of existing as a stand-alone business.

Warburg Pincus has made successful investments in a wide range of businesses and has the capability to invest at all stages of a business life cycle—from venture capital start-ups to developing companies to buyouts and recapitalizations. To help ensure the success of these companies, to the extent required, Warburg Pincus frequently provides new rounds of financing to companies in which it invests, as those companies grow and develop. Warburg Pincus is dedicated to ensuring the continued success of CISAC in its abilities to meet its capital needs, as well as industry and governmental obligations.

- H. CIS shall only be involved with neutral lines of business. This condition would not permit CIS to be a telecommunications service provider.
- I. CIS cannot provide consultative services to telecommunications service providers.

Response to H and I:

Warburg Pincus, LMIMS and CIS completely agree that CISAC must be involved only in neutral lines of business. Indeed, the Code of Conduct described above ensures that CISAC would never become a telecommunications service provider. However, CIS cannot agree that CISAC would never provide consultative services to telecommunications service providers. Even now CIS offers consultative-like services to the telecommunications industry. For example, CIS provides NPAC interface testing services to carriers that are billed on a time and materials basis. Consultation services that do not align in any way CIS with a particular industry segment do not jeopardize CIS' neutrality. CISAC must be permitted to grow and develop its business in the future and to seek out new neutral third-party business opportunities. CISAC does agree that the neutrality audit should regularly review all new CISAC services and report on whether they in fact or appearance violate neutrality.

- J. CIS has stated it will strictly adhere to its code of conduct. CIS should demonstrate how this would be done.
- K. Quarterly or reasonably scheduled audits must be published, include a code of conduct performance measurement, and industry concerns and requirements. .

Response to J and K:

The Code of Conduct set out above provides specific and far-reaching requirements for Warburg Pincus and CISAC. Strict adherence to the Code of Conduct will be ensured through regularly scheduled audits. A neutrality audit should be conducted by a neutral party every 90 days. These audits will be paid for by CISAC. They will be conducted by a mutually agreed upon neutral party. The results of the audits will be presented to the FCC, NANC and to the LNP LLCs.

These audits will be designed to ensure that the day-to-day activities of CISAC remain entirely neutral and are not subject to the undue influence of Warburg Pincus or any entity affiliated with a telecommunications service provider.

Neutrality audits should include, but would not necessarily be limited to, the following procedures:

- **Review and identify any investments in telecommunications service providers made by Warburg Pincus funds;**
- **Analysis of all CISAC transactions with Warburg Pincus companies affiliated with telecommunications service providers to ensure neutral, fair dealings;**
- **Analysis of the treatment of all confidential information held by CISAC; review of CISAC's policies, practices and systems for safeguarding the confidentiality of all its sensitive data;**
- **Investigation and analysis of any complaints received regarding CISAC neutrality and/or impartiality; and**
- **Review of CISAC operating policies and their implementation to ensure neutral operations.**

A report on the neutrality audit results will be provided to the NANC for review. Warburg Pincus fully understands that the safety of its investment and the continued right of CISAC to perform the NANPA functions will be dependant upon favorable reports from the auditors. If Warburg Pincus or CISAC fail to maintain the NANPA's neutrality, the FCC may terminate its contract. Thus, both companies have a strong incentive to ensure that all of their activities are in compliance with the FCC's neutrality requirements.

CODE OF CONDUCT

1. Warburg Pincus will never cause CISAC, directly or indirectly, to show any preference or provide any special consideration to any company that is a telecommunications service provider, which term as used herein shall have the meaning set forth in the Telecommunications Act of 1996.
2. Warburg Pincus shall have no access to user data or proprietary information of the telecommunications service provider served by CISAC.
3. Warburg Pincus will ensure that no user data or proprietary information from any telecommunications service provider in which it holds an interest is disclosed to CISAC.
4. Confidential information about CISAC business services and operations will not be shared through Warburg Pincus with employees of any telecommunications service provider in which Warburg Pincus holds an interest. Warburg Pincus will guard its knowledge and information about CISAC's operations as it would its own proprietary information.
5. No person employed by, or serving in the management of, Warburg Pincus or any private equity fund controlled by Warburg Pincus will be directly involved in the day-to-day operations of CISAC. No senior employees of any company that is a telecommunications service provider, and in which Warburg Pincus has an attributable interest, will be employed (full-time or part-time) by the CISAC business.
6. Warburg Pincus will be represented on the Board of Directors of CISAC. It will not control a majority of the Board. It will be involved in normal Board affairs of CISAC. No Warburg Pincus representative on the CISAC Board of Directors will at the same time serve on the Board of any company in which Warburg Pincus or any private equity fund controlled by it has a greater than 5% equity investment if that company is a telecommunications service provider that makes use of numbering resources. No Warburg Pincus representative on the CISAC Board of Directors will at the same time serve as a Director of any private equity fund controlled by Warburg so long as that fund owns more than a 5% equity investment in a telecommunications service provider that makes use of numbering resources.
7. Warburg Pincus will notify one designated representative of all of the LLCs within 20 business days after Warburg Pincus, or any private equity fund controlled by it, (a) acquires an equity interest of 5% or more in any telecommunications service provider, and (b) increases any such equity interest by 5% or more from any such equity interest held at the later of the date hereof and the date of the last notification of the level of such equity interest.

8. No employee of CISAC will hold any interest, financial or otherwise, in any company that would violate the neutrality requirements of the FCC or the NPAC Contractor Services Agreements (the Master Agreements).
9. CISAC will hire an independent party to conduct a neutrality review of CISAC, ensuring that CISAC and Warburg Pincus comply with all the provisions of this Code of Conduct. The neutrality analyst will be mutually agreed upon by CISAC and the LLCs. The neutrality review will be conducted quarterly. CISAC will pay the expenses of conducting the review. CISAC and Warburg Pincus will provide the analyst with reasonable access to information and records necessary to complete the review. The results of the review will be provided to the LLCs, to the North American Numbering Council and to the FCC and shall be deemed to be confidential and proprietary information of CISAC, Warburg and WPEP. This is the "Neutrality Review" provided for in Section 7 of the Assignment Agreements to which CISAC is a party and Warburg and WPEP shall cooperate with such review in accordance with such Section 7.
10. For as long as Warburg Pincus owns Warburg Pincus Asset Management (WPAM), WPAM will not own more than 10% of any telecommunications service provider. Warburg Pincus has agreed to sell WPAM to Credit Suisse Group. That sale is expected to close by mid-June 1999.

Lockheed Martin IMS
Communications Industry Services
1200 K Street, N.W., Washington, D.C. 20005
Telephone: 202-414-3706 Facsimile 202-289-4895



March 22, 1999

Mr. Alan Hasslewander
Chairman
North American Numbering Council
4140 Clover Street
Honeoye Falls, NY 14472

Dear Alan:

Following the NANC meeting last week, I thought it would be helpful to further elaborate our views on key issues that were raised by NANC members before your scheduled conference call. Responsibilities of the North American Numbering Plan Administrator (NANPA) and of the Local Number Portability Administrator (LNPA) must be performed by a reliable, capable, stable and neutral service provider. The proposed restructuring of Lockheed Martin's Communications Industry Services business unit is designed to establish a third party administrator (called CISAC, below) that meets the industry's requirements. The following principles define the restructuring:

1. CISAC will be a free standing, independent company. Its mission is the provision of reliable, neutral third party services. It will not offer competitive telecommunications services and will not own interests in companies that do.
2. The proposed CIS restructuring is in compliance with the existing FCC neutrality rules. No change in the FCC's neutrality rules is requested. No waiver from the rules is required. CISAC, Warburg Pincus and Lockheed Martin believe the FCC and NANC should continue to actively enforce the neutrality rules. (A memorandum responding to recent questions from the NANC about the neutrality rules is attached.) Therefore, future actions by CISAC and Warburg Pincus will be subject to existing FCC neutrality rules that are currently in place.
3. CISAC and Warburg Pincus commit to a Code of Conduct that ensures CISAC's continuing neutrality. The Code includes a neutrality audit that will notify the FCC, NANC and the LLCs of any activities that could affect CISAC's status as a neutral third party.

4. In the future, CISAC may introduce new services to meet the industry's needs for neutral, third party services. The provision of these new services will remain subject to compliance with the FCC neutrality rules and policies. CISAC will not offer services that advantage one service provider or segment of the industry over others. CISAC's services will be available to all service providers under identical terms. CISAC's new services will be subject to the neutrality audit and will be reported to the FCC, NANC and the LLCs.
5. CISAC will be financially stable. Today, CISAC operations are profitable. Warburg Pincus' investment of all cash and all equity ensures that CISAC's balance sheet will be strong. Furthermore, Warburg Pincus intends to provide additional capital as needed and appropriate for the development of CISAC. CISAC's financial strength will be comparable to that of Lockheed Martin IMS.
6. There will be no change in the responsibilities or liabilities of the NANPA and the LNPA. CISAC will assume all of the existing obligations under FCC orders and LLC contracts currently in effect. Furthermore, in negotiations with the Local Number Portability LLCs, CISAC has offered to provide additional levels of operating and financial assurances to the industry. The additional assurances, including performance bonds, are substantial and greater than those currently in place. CISAC expects to reach agreement soon with the LLCs on its offered commitments.
7. Operationally, the same NANPA and LNPA services will be delivered by the same CISAC employees using the same infrastructure, policies and procedures as today. All of the Lockheed Martin employees who contributed to the success of CISAC to date will transfer from Lockheed Martin IMS to the new CISAC. All supplier relationships will transfer to the new CISAC as well. There will be no disruptions of service or quality.
8. There will be no increase in prices for NANPA or LNP services. There will be no transition charges to NANPA or LNPA customers.

Please forward this letter and attachment to all NANC members for their consideration. CISAC, Warburg Pincus and Lockheed Martin IMS invite further questions and discussion about the restructuring. Our aim is to establish CISAC so that it meets the requirements of the industry.

Sincerely,

Jeffrey E. Ganek
Senior Vice President &
Managing Director

SUPPLEMENTAL RESPONSE TO NORTH AMERICAN NUMBERING COUNCIL REGARDING THE TRANSFER OF NANPA RESPONSIBILITIES

The Communications Industry Services ("CIS") business unit of Lockheed Martin IMS ("LMIMS"), Lockheed Martin Corporation ("Lockheed Martin") and Warburg, Pincus & Co. ("Warburg Pincus") (collectively, the Parties) wish to supplement their earlier responses to the North American Numbering Council ("NANC") in an effort to address a number of remaining issues regarding the transfer of CIS to the CIS Acquisition Corporation ("CISAC"). Specifically, the Parties provide additional information regarding: (1) the North American Numbering Plan Administrator's ("NANPA") compliance with the Federal Communications Commission's ("FCC") neutrality requirements; (2) new lines of business that CIS may enter; and (3) CIS liability in the event of NANPA default and/or nonperformance.

The Transfer Of CIS Complies With FCC Neutrality Rules And Policies

The Parties wish to clarify and restate their view that the transfer of CIS as a freestanding, independent company to CISAC does not affect CIS' existing status under FCC rules and policies as a neutral third party, non-aligned with any particular telecommunications industry segment.¹ The Parties do not seek and do not require a waiver or change in existing FCC rules and policies in order to ensure that the transfer of CIS does not compromise its existing neutrality. First, CISAC's sole business will be the provision of neutral third party services. Second, Warburg Pincus is not itself a telecommunications service provider, and its existing telecommunications investments account for a minor portion of the value of Warburg Pincus' total private equity investments in more than 100 diversified companies. Moreover, as a

¹ *Administration of the North American Numbering Plan*, 12 FCC Rcd 23040 (1997) ("NANPA Selection Order").

diversified financial investor, rather than a strategic investor, Warburg Pincus possesses an inherent neutrality advantage and is not the type of investor that the FCC's structural neutrality rules were designed to address.

As the Parties have reported previously in a number of filings with the FCC, NANC and the Limited Liability Corporations ("LLCs") that administer the regional local number portability contracts, Warburg Pincus indirectly holds a greater than 10 percent interest in Covad Communications Company ("COVAD"), and Primus Telecommunications Group, Inc. ("Primus"). Warburg Pincus also holds a six percent interest in NTL Telecommunications, Inc. ("NTL") and now holds about a two percent interest in Global TeleSystems Group, Inc. ("GTS"). Taken together these investments represent *de minimis* Warburg Pincus holdings in telecommunications companies.

Although Covad is an authorized competitive local exchange provider in 12 states, it does not operate as a common carrier service provider and does not use numbering resources. Primus, in which Warburg Pincus has an indirect 14 percent investment, offers a significant majority of its services outside the United States, and the services are unaffected by U.S. number administration. Warburg Pincus earlier reported a 12 percent interest in Esprit Telecom Group plc. ("Esprit"), which had announced an agreement to sell the company to GTS. The sale has now closed and Warburg Pincus' previous 12 percent interest in Esprit has been converted to approximately a two percent interest in GTS. NTL, in which Warburg Pincus has an indirect six percent ownership interest, operates primarily in the United Kingdom and its operations have no relation to U.S. telecommunications services or the NANP. Warburg Pincus' current interests in NTL and GTS are not attributable under the FCC rules.

In the *NANPA Selection Order* affirming NANC's selection of LMIMS as the NANPA, the FCC found that Lockheed Martin's *de minimis* interest in telecommunications service providers did not render LMIMS non-neutral. Specifically, the FCC concluded that section 52.12(a)(1)(iii) of its rules provides that, even if the NANPA does not satisfy the so-called 10 percent affiliation standard, the FCC, nonetheless, "may find that the NANPA is neutral and not subject to undue influence by parties with a vested interest in the outcome of numbering administration and activities."²

For example, the FCC found that Lockheed Martin was neutral for purposes of assuming the NANPA responsibilities because (1) of the *de minimis* nature of its affiliate services; (2) its affiliated carriers did not utilize numbers under control of the NANPA; and (3) the stake held by Lockheed Martin in the carrier at issue was extremely small relative to its overall assets.³ The same reasoning applies to the investments held by Warburg Pincus in telecommunications service providers.

As the *NANPA Selection Order* demonstrates, the neutrality analysis for a potential NANPA goes beyond simply ascertaining whether an entity with ownership interests in the NANPA has interests in telecommunications service providers that exceed a certain threshold. Rather, a finding that the NANPA is neutral within the meaning of the FCC's rules governing the administration of numbering resources must take into account a number of factors, only one of which is the ownership interests of its owners. Other factors that should be included in such an analysis are: (1) the nature and structure of an entity's investment strategy and business

² *NANPA Selection Order* at 23081.

³ *Id.*

practices; (2) the use or lack of operational “firewalls” or codes of conduct; (3) the size of potentially conflicting investments as compared to the remainder of the investment portfolio; and (4) the extent to which potentially conflicting investments make use of numbering resources, among others. Moreover, the relative importance of these factors is not static but must be understood in the context of a specific proposal.

Moreover, Warburg Pincus is a financial investor with a diversified portfolio of well-run companies across the spectrum of the domestic and international industries. Warburg Pincus’ position as a diversified financial investor, rather than a strategic investor, is an inherent neutrality advantage. Unlike most operations-oriented, strategic investors (such as, for instance, Lockheed Martin), Warburg Pincus does not invest with a view to achieving synergies or efficiencies between and among its separate investments in independent companies (for example, by combining firms’ operations or leveraging synergies across business units). The companies in which Warburg Pincus invests do not share information or expertise with one another as a result of Warburg Pincus’ ownership interest. Rather, Warburg Pincus seeks to maximize each investment’s value, without attempting to account for the effect (if any) such efforts may have on other investments.

Warburg Pincus’ status as a financial, as opposed to a strategic investor, is demonstrated by two key commitments it makes in the proposed Code of Conduct submitted to the FCC, NANC and the LLCs: (1) Warburg Pincus will not have any involvement in day-to-day operations of CISAC and (2) Warburg Pincus will not control the board of CISAC. Warburg Pincus is providing financing for the restructuring of CIS and will leave management and operation of the business to the free standing, independent CISAC board and management team.

The existing *de minimis* Warburg Pincus interests in telecommunications companies would not render CISAC non-neutral in fulfilling its responsibilities as the NANPA and do not violate existing FCC neutrality rules and policies. Thus, it is clear that approval of the proposed transaction, far from setting an unacceptable precedent, will both fulfill the intent of the FCC's neutrality rules and serve the public interest by ensuring a financially stable neutral NANPA.

**Any Future Warburg Pincus Investments In Telecommunications Companies
Would Be Subject To Existing FCC Neutrality Rules and Policies**

When the FCC approved LMIMS as the NANPA, it noted that to the extent Lockheed Martin or its affiliates in the future offer common carrier services that are more than *de minimis* in nature, it would reconsider the issue of LMIMS' neutrality under its rules.⁴ The Parties expect that if in the future Warburg Pincus or new or existing entities in which it invests offer telecommunications services, or use numbering resources, the FCC would review the issue of CISAC's continued neutrality under existing FCC rules and policies and the *NANPA Selection Order*.

To ensure this result, Warburg Pincus and CIS have committed to adhere to a Code of Conduct that requires Warburg Pincus to report to the FCC, NANC and the LLCs within 20 days after it acquires an equity interest of five percent or more in any U.S. telecommunications provider. Warburg Pincus also has agreed, following discussions with NANC members, to include within the Code of Conduct a requirement to report to the FCC, NANC and the LLCs within 20 days after Warburg Pincus becomes aware that an entity in which it invests has begun to use numbering resources. In such event, Warburg Pincus would work with the FCC, NANC and LLCs to determine what additional measures, if any, are required to ensure CISAC's

⁴ *Id.* at 23081-82.

continued neutrality. This reporting requirement, coupled with CISAC's and Warburg Pincus' further commitment under the Code of Conduct to engage neutral parties to conduct rigorous quarterly audits of transactions between Warburg Pincus and CISAC and between Warburg Pincus or CISAC and telecommunications service providers affiliated with Warburg Pincus, ensures that the FCC, NANC and the LLCs will have timely notification of any future changes that may affect the status of CISAC's neutrality. The FCC, NANC and the LLCs presumably would rely on the existing neutrality provisions in the FCC rules and policies and the LLC local number portability contracts to review the reported changes. The approach is the same as that established by the FCC in its initial approval of LMIMS as the NANPA, except that Lockheed Martin did not impose upon itself the same auditing and reporting requirements that Warburg Pincus is prepared to adopt in the proposed Code of Conduct.

The Parties encourage NANC members to review other, more comprehensive discussions of the neutrality issue in the Parties' Request for Expedient Review of the CIS Transfer to Warburg Pincus filed with the FCC on December 21, 1998 and the Supplemental Responses to FCC Questions filed with the FCC on February 16, 1999.

CISAC New Service Offerings Will Be Subject To Existing FCC Neutrality Rules and Policies

CISAC will not offer telecommunications services itself and will engage only in the provision of neutral third party services. CISAC, however, may offer from time to time new third party services. Like any other aspect of CISAC's operations, the provision of any new services by CISAC will be fully subject to FCC neutrality rules and policies. That means that any new services offered by CISAC, including consulting services, cannot have the effect of aligning it with a specific segment of the communications industry. Any new services offered by

CISAC must not subject it to undue influence by parties with a vested interest in the outcome of numbering administration and activities.⁵ To ensure that CISAC remains in compliance with FCC neutrality requirements it will make available its third party services to all segments of the industry on a nondiscriminatory basis. The provision of CISAC services also would be subject to the quarterly neutrality audits proposed by Warburg Pincus and CISAC. The audits would review all CISAC services, including new third party services, to determine whether CISAC remains compliant with the FCC neutrality rules and policies. Because the provision of CISAC third party services remains subject to existing FCC rules and policies, no incentive or precedent is created to encourage non-neutral entities to offer neutral, third party services that are subject to FCC oversight.

CISAC Will Assume The Same Level Of Liability As LMIMS Following The Transfer Of CIS

CISAC will assume all obligations of LMIMS in serving as NANPA and as the Local Number Portability Administrator ("LNPA") under the same terms and conditions in effect today. CISAC also will assume additional liabilities for the benefit of its customers.

CISAC, whose financial stability is comparable to that of LMIMS, will assume all of the significant obligations set forth in the contracts executed between LMIMS and the LLCs for local number portability services. The agreements reflect the significant capital investment and technological expertise required to manage successfully local number portability operations by imposing liability obligations upon LMIMS in the event of nonperformance or default. In addition to assuming the existing liabilities, CISAC has offered to provide further assurances that the LLCs' interests will be served in the unlikely event that CISAC cannot perform. CISAC also has offered operating assurances and financial guarantees that would cover the potential costs

⁵ See 47 C.F.R. § 52.12

that the LLCs might incur in such an event. CISAC expects to reach agreement with the LLCs on these provisions.

CISAC also will assume all of the responsibilities and obligations assumed by LMIMS as the NANPA. Because the NANPA operation is less capital intensive than local number portability operations, NANPA has assumed fewer financial liabilities under FCC rules and policies than the LNPA assumed under the local number portability contracts. To ensure that the industry continues to receive the highest quality service from NANPA, CISAC will employ all of the existing NANPA staff and will own and operate all of the existing infrastructure for the NANPA systems. CISAC will be at least as financially strong as LMIMS and will have sufficient financial resources upon which to draw in order to perform satisfactorily its NANPA functions.

Lockheed Martin IMS
Communications Industry Services
1200 K Street, NW, Washington D.C. 20005
Telephone 202-414-3500 Facsimile 202-289-4895

March 26, 1999

Mr. Alan Hasselwander
Chairman
North American Numbering Council
4140 Clover Street
Honeoye Falls, NY 14472

Re: CIS Transfer Issues

Dear Alan:

CIS received prompt feedback from some of the North American Numbering Council ("NANC") members on the supplemental material distributed Wednesday, March 24, addressing issues raised by NANC members about the transfer of the North American Numbering Plan Administrator ("NANPA"). We wanted to respond as soon as possible to the additional questions and issues that some NANC members posed after reviewing the supplemental material.

First, NANC members have inquired how the quarterly neutrality audits to which Warburg Pincus and CIS have committed as part of their Code of Conduct would work in practice. CIS has prepared a document that sets forth many of the mechanics for conducting the quarterly audits. CIS also has agreed to consult with the FCC, NANC and Limited Liability Corporations ("LLCs") to further refine the precise scope and content of the audits. We have attached a copy of a proposed approach to the neutrality audits. CIS agrees to supplement its response ("Response") filed on February 16, 1999 to a series of FCC questions concerning the NANPA transfer to more fully describe its proposed audit procedures. CIS will supplement its Response well before the April 16, 1999 filing deadline for public comments on the CIS Response.

Second, some NANC members expressed satisfaction that Warburg Pincus agreed to report to the FCC, NANC and the LCCs: (1) within 20 days after Warburg Pincus acquires an equity interest of five percent or more in any U.S. telecommunications company, and (2) within 20 days after Warburg Pincus becomes aware that an entity in which it invests has begun to use numbering resources. Some NANC members asked that Warburg Pincus and CIS ensure that this commitment is placed on the FCC's public record. CIS will supplement its Response well before the April 16, 1999 filing deadline for public comments on the CIS Response.

Third, some NANC members requested that when CIS reaches agreement with the LLCs on the transfer of the Local Number Portability Administrator (LNPA) responsibilities, that it place on the FCC public record an acknowledgement that CIS has agreed to post a

Alan Hasselwander
March 26, 1999
Page Two

performance bond to ensure that liabilities are covered in the event that CIS Acquisition Corporation ("CISAC") is unable to perform. CIS will supplement its Response to acknowledge this agreement as soon as possible after Lockheed Martin IMS and CIS have reached agreement with the LLCs on the transfer of the LNPA.

Fourth, some NANC members expressed an interest in having an opportunity to comment publicly on the reports that Warburg Pincus files with the FCC to disclose any investments of five percent or more in a telecommunications carrier. As noted above, Warburg Pincus and CISAC have agreed to inform the FCC, NANC, and the LLCs within 20 days after Warburg Pincus acquires five percent or more of an equity investment in a telecommunications carrier. Such a reporting obligation ensures that all Warburg Pincus equity investments in telecommunications carriers of more than five percent will be subject to immediate review by the FCC, NANC, and the LLCs. These entities will then be able to determine whether any additional measures may be required to ensure CISAC's continued neutrality. Moreover, CIS acknowledges the FCC's broad discretion in such matters and assumes that it will seek public comment on any Warburg Pincus report that in its view warrants public discussion.

CIS, of course, stands ready to discuss and respond to any other issues that NANC members may wish to raise prior to the teleconference next week.

Very truly yours,

Jeffrey E. Ganek
Senior Vice President
& Managing Director

Enclosure

Neutrality Audits

An independent and neutral party mutually acceptable to the FCC, NANC, the LLCs and CISAC will perform the neutrality audit on a quarterly basis.

The audit will be paid for by CIS.

CISAC and Warburg Pincus will provide to the neutrality auditor reasonable access to information and data regarding relevant CISAC and Warburg Pincus operations. The auditor will agree to treat as confidential CISAC and Warburg Pincus data and information.

Audit results will be presented once a quarter to the FCC, NANC and the LLCs.

The FCC, NANC and the LLCs can use the audits to identify actions by CIS and Warburg Pincus that may violate the FCC neutrality rules, the FCC order approving the restructuring of CIS — including the Code of Conduct — and/or the neutrality provisions set forth in the local number portability contracts executed between CISAC and the LNP LLCs. A finding that CISAC and/or Warburg violate the neutrality provisions of either the FCC rules or LLC contracts could be grounds for action against CISAC.

The exact nature and extent of the Neutrality Audit procedures will be developed in consultation with the FCC, NANC and the LLCs. Highlights are described below. The Neutrality Audits will examine CISAC and Warburg Pincus performance during the quarter with respect to the specific provisions of the Code of Conduct, which are listed in bold.

1. **Warburg Pincus will never cause CISAC, directly or indirectly, to show any preference or provide any special consideration to any company that is a telecommunications service provider, which term as used herein shall have the meaning set forth in the Telecommunications Act of 1996.**

The Neutrality Auditor will select and review a statistically valid sample of transactions performed by CISAC for telecommunications services providers. The Auditor will review the samples for compliance with existing, effective rules of the FCC and NANC and of CISAC's contracts with the LLCs that effect neutrality.

In addition, CISAC will certify that all CISAC employees are fully aware of the Code of Conduct. The Auditor will review the certifications.

2. **Warburg Pincus shall have no access to user data or proprietary information of the telecommunications service providers served by CISAC.**

The Neutrality Auditor will review CISAC's policies and practices with respect to maintaining the confidentiality of the user data and proprietary data that it holds.

3. **Warburg Pincus will ensure that no user data or proprietary information from any telecommunications service provider in which it holds an interest is disclosed to CISAC.**

The Neutrality Auditor will select and review a statistical sample of operating data provided to CISAC by any telecommunications service provider in which Warburg Pincus holds an attributable interest. The Auditor's report will reflect whether such data is provided in conformance with regular CISAC policies and practices and/or FCC rules.

4. **Confidential information about CISAC business services and operations will not be shared through Warburg Pincus with employees of any telecommunications service provider in which Warburg Pincus holds an interest. Warburg Pincus will guard its knowledge and information about CISAC's operations as it would its own proprietary information.**

The Neutrality Auditor will review CISAC's policies and practices with respect to maintaining the confidentiality of data about its operations and business services. The Auditor will review the policies and practices Warburg Pincus employs to keep such data confidential and separate and apart from any telecommunications service provider in which Warburg Pincus holds an interest. The Auditor will report on the effectiveness of the practices in maintaining CISAC's neutrality. And, if the Audit identifies areas of concern, the Auditor will recommend possible changes in information management practices.

5. **No person employed by, or serving in the management of, Warburg Pincus or any private equity fund controlled by Warburg Pincus will be directly involved in the day-to-day operations of CISAC. No senior employees of any company that is a telecommunications service provider, and in which Warburg Pincus has an attributable interest, will be employed (full-time or part-time) by the CISAC business.**

CISAC employees and consultants will document all contacts they have and the nature of those contacts with employees and consultants of Warburg Pincus and of telecommunications service providers in which Warburg Pincus holds an attributable interest. And, CISAC will provide a current list of employees, with their job titles, and consultants who are also employed by Warburg Pincus or by telecommunications service providers in which Warburg Pincus holds an attributable interest. The Auditor will report violations of 5, above.

6. **Warburg Pincus will be represented on the Board of Directors of CISAC. It will not control a majority of the Board. It will be involved in normal Board affairs of CISAC. No Warburg Pincus representative on the CISAC Board of Directors will at the same time serve on the Board of any company in which Warburg Pincus or any private equity fund controlled by it has a greater than 5% equity investment if that company is a telecommunications service provider that makes use of numbering resources. No Warburg Pincus representative on the CISAC Board of Directors will at the same time serve as a Director of any private equity fund controlled by Warburg Pincus**

so long as that fund owns more than a 5% equity investment in a telecommunications service provider that makes use of numbering resources.

The Neutrality Auditor will identify Warburg Pincus' representatives on the CISAC board. The Auditor will determine whether those board members have complied with all of the provisions in 6, above.

- 7. Warburg Pincus will notify one designated representative of all of the FCC, NANC and the LLCs within 20 business days after Warburg, or any private equity fund controlled by it, (a) acquires an equity interest of 5% or more in any telecommunications service provider, and (b) increases any such equity interest by 5% or more from any such equity interest held at the later of the date hereof and the date of the last notification of the level of such equity interest. Warburg Pincus will also notify the representative if and when a telecommunication services provider in which it holds an attributable interest begins to use numbering resources.**

Warburg Pincus will report quarterly, as required in 7, above. The Auditor will review the report for compliance.

- 8. No employee of CISAC will hold any interest, financial or otherwise, in any company that would violate the neutrality requirements of the FCC or the NPAC Contractor Services Agreements (the Master Agreements).**

CISAC employees will certify quarterly that they are in compliance with 8. The Auditor will review the certifications.

- 9. CISAC will hire an independent party to conduct a neutrality review of CISAC, ensuring that CISAC and Warburg Pincus comply with all the provisions of this Code of Conduct. The neutrality analyst will be mutually agreed upon by CISAC and the LLCs. The neutrality review will be conducted quarterly. CISAC will pay the expenses of conducting the review. CISAC and Warburg Pincus will provide the analyst with reasonable access to information and records necessary to complete the review. The results of the review will be provided to the LLCs, to the North American Numbering Council and to the FCC and shall be deemed to be confidential and proprietary information of CISAC, Warburg Pincus and WPEP. This is the "Neutrality Review" provided for in Section 7 of the Assignment Agreements to which CISAC is a party and Warburg Pincus and WPEP shall cooperate with such review in accordance with such Section 7.**

The Neutrality Auditor will conduct its quarterly audits and report to the FCC, NANC and the LLCs as described above.

- 10. For as long as Warburg Pincus owns Warburg Pincus Asset Management (WPAM), WPAM will not own more than 10% of any telecommunications service provider. Warburg Pincus has agreed to sell WPAM to Credit Suisse Group. That sale is expected to close by mid-June 1999.**
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The Neutrality Auditor will examine a report from WPAM that describes all of WPAM's holdings in telecommunication services providers and determine whether WPAM complies with the requirements of 10, above.

26 March 1999
Q010-L-22

Mr. Alan C. Hasselwander
Chairman
North American Numbering Council
c/o Frontier
4140 Clover Street
Honeoye Falls, NY 14472-9323

Dear Chairman Hasselwander:

Thank you for providing me a copy of the materials that you distributed to the North American Numbering Council (NANC) members in preparation for the 30 March 1999 conference call. I would like to bring to your attention Mitretek Systems' position on two fundamental issues relating to the NANC's review of the circumstances concerning the North American Numbering Plan Administrator (NANPA).

First, as you know, the Federal Communications Commission requested the NANC's view on both the proposed sale by Lockheed Martin of the NANPA and the ability of Mitretek to assume the responsibilities of the NANPA. As no one has questioned Mitretek's ability to meet all the necessary elements to assume the NANPA responsibilities, we ask the NANC to make clear in its comments to the Commission Mitretek's capability to assume expeditiously the responsibilities of the NANPA.

Second, Mitretek believes that the NANC's acceptance of the Lockheed Martin sale of the NANPA proposal would effectively amend and circumvent the neutrality standard promulgated previously by the NANC, in its Requirements Document, and the Commission, in its rules. We ask that the NANC give consideration to the position presented below, and also to the views of its members, which reflect similar concerns, but may not have been circulated to the full NANC.¹

¹ See Comments of AT&T Corp., CC Docket No. 92-237, NSD File No. 98-151 (filed 15 March 1999), Comments of SBC Communications Inc., CC Docket No. 92-237, NSD File No. 98-151 (filed 22 January 1999).

Including its original petition to the Commission, Lockheed Martin and Warburg now have submitted five separate documents seeking to explain² how Warburg's ownership does not violate the neutrality standard. Essentially, Lockheed Martin and Warburg contend that Warburg's position, as a "diversified financial investor" and as a "passive" versus "strategic" investor, removes any neutrality issue. Lockheed Martin and Warburg also contend that the entity which Warburg will control, CIS, and which will be responsible for the NANPA, will be an independent entity. Where Warburg holds in excess of a ten-percent interest in a telecommunications entity, Warburg asserts that these entities have no interest in numbering resources and therefore do not raise a neutrality issue.

The law requires the NANPA to be impartial.³ The Commission's rules require it to be an independent and impartial non-government entity and not aligned with any particular industry segment.⁴ The Commission's rules go on to state that the NANPA may not be an affiliate of any telecommunications service provider.⁵ The Commission's rules do not provide an exception for a "diversified financial investor" or "passive investor." Nor do the rules bestow independence in a neutrality sense on a representation that the NANPA is a "free standing independent corporation." The Commission's rules do not ignore that 95 percent of the NANPA is proposed to be held by an entity that has significant telecommunications holdings.

Such an argument would seemingly allow Lockheed Martin to continue as the NANPA, which, in contrast to its previous position, it now contends would be permissible.⁶ What has taken place is an evolution of the Commission's neutrality standard to fit the self-interest of Lockheed Martin and Warburg. The NANC should reject such arguments.

Assertions that Warburg's interests in telecommunications do not use numbering and do not violate the neutrality standard also seek to amend the neutrality standard. The neutrality rules recognize not simply the need that numbers be allocated fairly, but that the NANPA has access to, and expertise in, sensitive market information--where and how telecommunications entities are competing. Assertions that entities such as Covad and Primus, are outside of this premise have no basis. The Commission's

² See Petition submitted 21 December 1998, Letter to Anna M. Gomez, Chief, Network Services Division, dated 16 February 1999, Responses to the North American Numbering Council CIS Issue Management Group Recommended Warburg Pincus CISAC/CIS Criteria, dated 12 March 1999, Answers to NANC Questions to the Communications Industry Services (CIS) Unit of Lockheed Martin Concerning Its Proposed Corporate Restructuring (Undated), Letter to Alan Hasselwander, Chairman, North American Numbering Council, dated 22 March 1999.

³ Section 251(e) of the Telecommunications Act of 1934.

⁴ 47 CFR 52.12(a)(1).

⁵ 47 CFR 52.12(a)(1)(i).

⁶ Compare Public Notice, DA 99-177 (7 January 1999) and Public Notice, DA 99-347 (19 February 1999) to Letter to Anna M. Gomez, dated 16 February 1999, response to question 15, page 17, fn 7.

rules reasonably expect the NANPA, an entity that competed for the responsibility and represented it would adhere to the standards, both substantively and in appearance, not have a relation to a segment of the telecommunications industry. It is significant that Warburg does not represent that its holdings will not use numbering resources or that it will refrain from investing in other telecommunications interests. It only promises to give the Commission and the NANC 20 days notice before it does so. The Commission's rules demand more.

Mitretek urges the NANC to reject contentions that Warburg meets the neutrality standard of the law. It urges the NANC to make a thorough evaluation of the issues, including the positions of its own members.

Please call upon me if I can respond to any comments or questions. I also ask that this letter be circulated to members of the NANC.

Sincerely,

H. Gilbert Miller

HGM/dm

cc: Kris Monteith
Jeannie Grimes
Diane Harmon
Jared Carlson
Ron Binz

**Discussion Paper for Use in Conjunction with the Conference Call Meeting of the
North American Numbering Council (NANC) on March 30, 1999**

In a Public Notice released on February 17, 1999 the Federal Communications Commission (FCC) requested "the NANC to provide its input to the Bureau on the Lockheed Martin Request", i.e. the request to transfer the Lockheed Martin Communications Industry Services Business "to a new independent company, Warburg, Pincus & Co.". In the Notice the FCC asks that the following issues be addressed:

- "(1) the neutrality of the CIS Acquisition Corporation, on the basis of the neutrality criteria set forth in the Requirements Document, as well as the Commission's rules and orders:
- (2) the ability of the CIS Acquisition Corporation to perform the functions of the NANPA in accordance with the Requirements Document;
- (3) the commitment of the CIS Acquisition Corporation to perform the functions of the NANPA at the price agreed to by Lockheed Martin; and,
- (4) the ability and commitment of the CIS Acquisition Corporation to fulfill the remainder of Lockheed Martin's current term as NANPA, without compromising its neutrality and the resources needed to administer the NANP."

Lockheed Martin has provided a number of documents in response to questions posed by the FCC or through the NANC. These responses have been transmitted to NANC members in the past and for convenience sake are attached again hereto for your review prior to the Conference Call Meeting. These files are named: CIS Answers to NANC Questions January 19 1999, LM Comments on Criteria of Issue Mgm Group March 12 1999, and Reply to Questions Lockheed Martin.

For purposes of reference on the issue of neutrality quoted below are excerpts from The Third Report and Order In the Matter of Administration of the North American Numbering Plan, CC Docket No. 92-237, October 9, 1997.

"69. The requirements Document defined 'neutrality as follows: 1) a respondent may not be an affiliate of any telecommunications service provider(s) as defined in the Telecommunications Act of 1996. 'Affiliate' is a person who controls, is controlled by, or is under the direct or indirect common control with another person. A person shall be deemed to control another if such person possesses, directly or indirectly, (i) an equity interest by stock, partnership (general or limited) interest, joint venture participation, or member interest in the other person ten (10%) percent or more of the total equity interests in the other person, or (ii) the power to vote ten (10%) percent or more of the securities (by stock, partnership (general or limited) interest, joint venture participation, or member interest) having ordinary voting power for the election of directors, general partner, or management of such other person, or (iii) the power to direct or cause the direction of the management and policies of such other person, whether through the ownership of or right to vote voting rights attributable to the stock, partnership (general or limited) interest, joint venture participation, or member interest of such other person by contract (including but not limited to stockholder agreement, partnership (general or limited) agreement, joint venture agreement, or operating agreement), or otherwise; 2) a respondent and any affiliate thereof may not issue a majority of its debt, nor may it derive a majority of its revenues from any telecommunications service provider. 'Majority' shall mean greater than 50 percent, and 'debt' shall mean stock, bonds, securities, notes, loans, or any other instrument of indebtedness,

and 3) notwithstanding the neutrality criteria set forth in 1) and 2) above, a respondent may be determined to be or not to be subject to undue influence by parties with a vested interest in the outcome of numbering administration activities. NANC may conduct an evaluation to determine whether a respondent meets the undue influence criterion”.

Paragraph 70 of the Order contains definitions of the terms “telecommunications” and “telecommunications provider”.

“The term ‘telecommunications’ means the transmission, between and among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.

The term ‘telecommunications service’ means the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available to the public, regardless of the facilities used”.

In Paragraph 71 discussing the definition of a telecommunications service provider, the Order states: “ We previously concluded that the inclusion of the phrase ‘directly to the public’ in the definition of telecommunications service limits the reach of that term to telecommunications services provided on a common carrier basis. Federal precedent holds that a carrier may be a common carrier if it holds itself out ‘to service indifferently all potential users’. We have found, however, that such users are not limited to end users. Common carrier services and services offered to other carriers, such as exchange access services, which is offered on a common carrier basis and provided to other carriers. ... The question is ... whether they have been authorized to offer services indiscriminately to the public, and are therefore providing services on a common carrier basis”.

At the NANC Conference Call Meeting, members will be asked to reach a decision on the following questions:

- Does NANC believe that the CIS Acquisition Corporation and its relationship with Warburg, Pincus & Co. is neutral under the criteria set forth in the Requirements Document as well as under the Commission’s rules and orders? If not, does the NANC believe that the CIS Acquisition is not subject to undue influence by parties with a vested interest in the outcome of numbering administration activities?
- Does NANC believe that the CIS Acquisition Corporation can perform the functions of the NANPA in accordance with the Requirements Document?
- If the Lockheed Martin petition is granted, does the NANC believe that the CIS Acquisition Corporation and Warburg, Pincus & Co. should be subject to conditions (beyond those set forth by Lockheed Martin and Warburg, Pincus & Co.) to assure its neutrality and capability during the current NANPA term? If so, what should those conditions be?